

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RC - RM - RD

PHILLIPS EYE INSTITUTE

Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) HEALTHCARE MINNESOTA

Petitioner

TYPE OF ELECTION
(CHECK ONE)

☒ CONSENT

☐ STIPULATED

☐ RD DIRECTED

☐ BOARD DIRECTED

(ALSO CHECK BOX
BELOW WHEN APPROPRIATE)

☐ 8(b)(7)

Case 18-RC-17760

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of valid ballots have been cast for

**SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) HEALTHCARE MINNESOTA**

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

UNIT: All full-time and regular part-time technical employees including the following classifications: Anesthesia Technician; Ophthalmic Technologist; Surgical Technologist; excluding all managers, registered nurses, confidential employees, currently represented employees, guards and supervisors, as defined in the Act, and all other employees.



Signed at Minneapolis, Minnesota on the
17th day of May, 2011.

Marlin O. Osthus, Regional Director
National Labor Relations Board, Region 18

ATTACHMENT A (REVISED)

NOTICE OF BARGAINING OBLIGATION

As a result of the representation election recently conducted, a labor organization has received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment commences on the date of the election.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are subsequently overruled and the labor organization is certified as the employees' collective bargaining representative, **THE EMPLOYER'S OBLIGATION TO ABSTAIN FROM MAKING UNILATERAL CHANGES TO BARGAINING UNIT EMPLOYEES' TERMS AND CONDITIONS OF EMPLOYMENT BEGINS ON THE DATE OF THE ELECTION**, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances¹, an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period that objections are pending where the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities that could accrue if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective bargaining representative, it violates Sections 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of bypassing, undercutting, and undermining the labor organization's status as the statutory representative of the employees. It is of no consequence that the changes may have been motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees for monetary losses incurred, with interest, as a result of the unilateral implementation of these changes, until such date as the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

In essence, the employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, as long as **THE EMPLOYER GIVES SUFFICIENT NOTICE TO THE LABOR ORGANIZATION CONCERNING THE PROPOSED CHANGE(S), NEGOTIATES IN GOOD FAITH WITH THE LABOR ORGANIZATION, UPON REQUEST, and GOOD FAITH BARGAINING BETWEEN THE EMPLOYER AND THE LABOR ORGANIZATION LEADS TO AGREEMENT OR OVERALL LAWFUL IMPASSE.**

¹ Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.